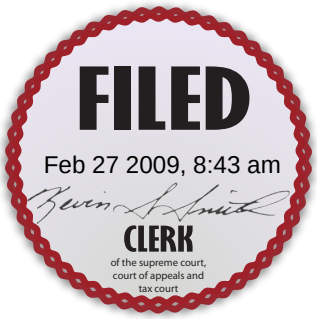

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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER LEACHMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0805-CR-275
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0712-FB-271577

FEBRUARY 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

Christopher Leachman, ("Leachman") appeals from his conviction and sentence for burglary,[1] a Class B felony; theft,[2] a Class D felony; and unauthorized entry of a motorized vehicle,[3] a Class B misdemeanor. Leachman presents the following restated issues for our review:

I. Whether there was sufficient evidence to support Leachman's convictions; and

II. Whether Leachman's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 10:30 a.m. on December 17, 2007, Harry Moore locked his apartment in Indianapolis on his way to work. Leachman, Christopher Marsh ("Marsh"), and Tasha Marsh ("Tasha") were living in the maintenance person's apartment on the first floor of the same building where Moore lived. The maintenance person had a key to the service room which contained the keys to all of the apartments in the building. While Moore was at work, Leachman obtained the key to Moore's apartment, and he, Marsh, and Tasha used the key to gain entry to Moore's apartment. While in the apartment Leachman and Marsh stole several CDs, DVDs, and a bucket to carry the items.

Moore's neighbor, Roy Charleston ("Charleston"), saw Marsh, Leachman, and Tasha in the hallway outside Moore's apartment. When Charleston asked the three from

[1] *See* Ind. Code § 35-43-2-1.

[2] *See* Ind. Code § 35-43-4-2.

[3] *See* Ind. Code § 35-43-4-2.7(d).

which apartment they were coming, Leachman and Marsh ran. Leachman and Marsh carried the bucket with the stolen items downstairs and placed it in Leachman's van.

The next morning, when Moore arrived home from work, he noticed that there were tapes and DVDs missing. Moore went down the hall to ask Charleston if he had seen anything. Charleston told Moore that he had not seen anyone in the apartment, but he had seen Leachman, Marsh, and Tasha in the hallway outside of Moore's apartment. Moore called the police and filed a report. Moore contacted the maintenance man and discovered that the maintenance key to his apartment was missing.

That same morning, Charleston saw Leachman and Marsh outside the apartment building. Leachman asked Charleston if a pawn shop gave money for CDs and DVDs. After Leachman and Marsh left for the pawn shop, Charleston went upstairs to tell Moore that he might find his missing possessions at a pawn shop. Moore followed Leachman and Marsh to a pawn shop where he witnessed Leachman attempting to sell the stolen items at the pawn shop.

Officer Philip Short of the Indianapolis Metropolitan Police Department responded to a dispatch at the pawn shop. When Officer Short arrived at the pawn shop he discovered Moore, Leachman, and Marsh there, and Moore was accusing Leachman and Marsh of stealing his property. After speaking with Moore, Officer Short detained Leachman and Marsh at the scene and called Detective Richard Ray of the Indianapolis Metropolitan Police Department.

Officer Short recovered a set of keys from Leachman that belonged to a burgundy mini-van parked in the parking lot of the pawn shop. Leachman told the officers that he

had possession of the van for two days, that he had received it from someone who owed him money and who "steal cars." *Exhibits Vol. at 12, State's Ex. 6*. Leachman told the officers that he had driven the van to his child's mother's home and she refused a ride because "it's stolen." *Id*.

After running the plate number on the van, the officers discovered that the van was reported stolen. The owner of the van indicated that she left the vehicle in the front of her home warming up, and that when she came out, the van was gone. When the van was released to her by the police, the lock on the driver's side door was broken out. She had not given anyone permission to drive the vehicle.

Leachman and Marsh were transported from the pawn shop to the district office for questioning. Leachman gave a taped statement in which he indicated that Marsh told him that he intended to burglarize Moore. Leachman told Marsh that he "would get rid of it," and that he would give him money for the items. *Exhibits Vol. at 33, State's Ex. 6.* Leachman stated that he knocked on the door of the apartment prior to the burglary to see if Moore was there, and that during the burglary he acted as a lookout, staying in the hall. *Id. at 19, 21, 24, 31, State's Ex. 6*.

The State charged Leachman with one count of burglary, a Class B felony; one count of theft, a Class D felony; and one count of unauthorized entry of a motorized vehicle, a Class B misdemeanor. At the conclusion of Leachman's jury trial, he was convicted of all three counts. The trial court sentenced Leachman to twelve years for the burglary conviction, with ten years executed at the Department of Correction and two years in community corrections; three years executed for the theft conviction; and, one-

hundred eighty days executed for the misdemeanor conviction, with all sentences to be served concurrently. Leachman now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Our standard of review for a challenge to the sufficiency of the evidence is well-settled. When reviewing claims of insufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Klaff v. State*, 884 N.E.2d 272, 274 (Ind. Ct. App. 2008). Rather, we examine only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id*. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id*. It is the function of the trier of fact to determine the weight of the evidence and the credibility of the witnesses and as a result, the jury is "'free to believe whomever they wish.'" *Id*. (quoting *Michael v. State*, 449 N.E.2d 1094, 1096 (Ind.1983)).

"Where circumstantial evidence is used to establish guilt, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the jury; if so, there is sufficient evidence." *Id*. at 274-75. (quoting *Maxwell v. State*, 731 N.E.2d 459, 462 (Ind. Ct. App. 2000)). "Furthermore, we 'need not determine whether the circumstantial evidence is adequate to overcome every reasonable hypothesis of innocence, but rather whether inferences may be reasonably drawn from that evidence which supports the verdict beyond a reasonable doubt.'" *Id*. at 275. (citing *Maxwell*, 731 N.E.2d at 463).

A. Burglary conviction

In order to convict Leachman of burglary, the State had to prove beyond a reasonable doubt that Leachman broke and entered Moore's apartment with the intent to commit theft. I.C. § 35-43-2-1(1)(B)(i). The jury was instructed on accomplice liability. In order to convict Leachman as an accomplice, the State needed to prove that Leachman knowingly or intentionally aided, induced, or caused another person to commit the burglary. Ind. Code § 35-41-2-4; *Turner v. State*, 755 N.E.2d 194, 198 (Ind. Ct. App. 2001). An accused's mere presence at the scene of the crime is insufficient to establish that he aided another person to commit an offense. *Peterson v. State*, 699 N.E.2d 701, 706 (Ind. Ct. App. 1998). Mere acquiescence in the commission of the offense is insufficient to convict a person as an accomplice. *Id*. There must be evidence of affirmative conduct on the part of the defendant to support an inference of common design or purpose to commit the crime. *Id*.

Leachman argues that "[t]he only direct evidence at trial to support the theory that Leachman unlocked the door to Moore's apartment and was in the apartment came from co-defendant Christopher Marsh, testimony that was incredibly dubious." *Appellant's Br.* at 7. "Within the narrow limits of the 'incredible dubiosity' rule, a court may impinge upon a jury's function to judge the credibility of a witness." *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). If a single witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed. *Id*. This is appropriate only where the court has confronted inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony

of incredible dubiosity. *Id*. Application of the rule is rare, subject to review to determine whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it. *Id*.

Leachman claims that Marsh's prior testimony was inconsistent with his testimony at trial, thereby making it not credible. Leachman also points to the fact that Marsh pleaded guilty to burglary and received a ten-year suspended sentence, to support his argument that Marsh had a reason to blame the entire incident on Leachman. Marsh made two pre-trial statements in which he indicated that he, Leachman, and Tasha burglarized Moore's apartment. In one statement, he initially denied the allegation, but admitted to his involvement by the end of the statement.

The State presented Leachman's own statement detailing his involvement in the burglary. Furthermore, the State presented eyewitness accounts of Leachman being outside the apartment on the night of the burglary and being caught in the act of selling the property at the pawn shop. The incredible dubiosity rule does not apply here.

The State produced sufficient evidence to support Leachman's burglary conviction. Leachman' own statement detailing his own involvement, Moore's testimony, and Charleston's testimony were sufficient to sustain the conviction. That testimony establishes that Leachman did much more than be present at the scene of the crime and acquiesce to it. His own statement indicates that he told Marsh that he would help get rid of the proceeds of the burglary, and that he knocked on Moore's door in order to determine if Moore was there, and that he stayed in the hallway. Leachman was observed in the hallway outside Moore's apartment.

In *Terry v. State*, 545 N.E.2d 831, 831 (Ind. 1989), the Supreme Court held that a defendant's burglary conviction was supported by sufficient evidence where the defendant stated that he accepted $10 to be a lookout while the breaking occurred. That defendant was tried as a principal for being an accomplice to the breaking. *Id*. The evidence establishes that Leachman did much more than the defendant in *Terry*. The evidence is sufficient to sustain Leachman's burglary conviction.

B. Unauthorized Entry of a Motor Vehicle

In order to convict Leachman of unauthorized entry of a motorized vehicle, the State had to prove that Leachman entered a motor vehicle knowing that he did not have the owner's permission to enter the motor vehicle, and that he did not have a contractual interest in the motor vehicle. Leachman claims that the evidence is insufficient to support his conviction of unauthorized entry of a motorized vehicle. Leachman contends that there is nothing in the record "to suggest that Leachman knew the van was stolen and that he did not have permission to enter it, or that the damage to the van would have led him to believe that it was stolen." *Appellant's Br.* at 9.

Leachman indicated in a statement to police that he had possession of the van for two days, that he received it from a person who owed him money, and who stole cars. Leachman drove the car to the home of his child's mother, who refused a ride because the van was stolen. The owner of the van testified that she did not know Leachman, did not give anyone permission to use her van, that she left her van in front of her home, and that when she came back outside, the van was gone. When the police released the van back to

the owner, the lock on the driver's side door was broken out. The evidence is sufficient to support Leachman's conviction.

II. Inappropriate Sentence

Last, Leachman argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *See* Ind. Appellate Rule 7(B). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *See Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006). When examining both the nature of the offense and the defendant's character, "we may look to any factors appearing in the record." *See Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007). The burden is on the defendant to demonstrate that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, although much of Moore's property was recovered, a recording of his children's birth was not recovered and is irreplaceable. Consequently, there was some damage to property.

As for the character of the offender, Leachman's criminal history supports the imposition of a slightly enhanced sentence. Leachman received a twelve-year sentence for the Class B felony burglary, with ten years in the Department of Correction, and two years in community corrections. His three-year sentence for theft, and one hundred

eighty-day sentence for the misdemeanor conviction were ordered to be served concurrently with the sentence for his burglary conviction. Leachman, who was twenty-five years old at the time of the offenses, had accumulated four prior felony convictions, receiving probation twice. Leachman has had his probation revoked twice. Accordingly, Leachman's criminal history supports his slightly enhanced sentence.[4] Leachman's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

MAY, J., and MATHIAS, J., concur.

[4] The sentencing range for a Class B felony is between two years and twenty years with an advisory sentence of ten years. *See* Ind. Code § 35-50-2-5.